

Minutes of the
Board of Minerals and Environment Meeting
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

January 15, 2009
10:00 a.m. CST

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman. Chairman Sweetman appointed Pete Bullene as secretary pro tem. The roll was called and a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Bob Duxbury, Chuck Monson, Mike DeMersseman, Pete Bullene, and Glenn Blumhardt.

BOARD MEMBERS ABSENT: Linda Hilde and Dennis Landguth.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM NOVEMBER 19-20, 2008, MEETING: Motion by Blumhardt, seconded by Monson, to approve the minutes from the November 19-20, 2008, Board of Minerals and Environment meeting, as mailed. Motion carried.

MINING ISSUES: The board was presented with the matrix sheet listing the DENR recommendations for release of liability and surety and releases of liability.

Motion by McCahren, seconded by Bullene, to accept the DENR recommendations for release of liability and surety and releases of liability, as shown on the matrix sheet (see attached matrix sheet). Motion carried.

OIL AND GAS CASE NO. 25-2008, NORTH FINN LLC, CASPER, WY: Chairman Sweetman appointed Glenn Blumhardt as hearing chairman for this case. Mr. Blumhardt opened the hearing at 10:15 a.m.

Max Main, attorney from Belle Fourche, represented North Finn LLC.

Richard Williams, Assistant Attorney General, represented the Department of Environment and Natural Resources (DENR).

Case No. 25-2008 is the application of North Finn LLC to amend portions of Oil and Gas Order Nos. 5-81 and 7-85 (Cady Creek Field), and Order No. 8-85 (West Short Pine Hills Field) to: (1) establish and/or maintain 320-acre spacing units for wells drilled to the Shannon Zone of the Eagle Member of the Pierre Shale; (2) allow an operator the option of locating a well in either quarter section within each 320-acre spacing unit; (3) allow the drilling of up to two gas wells per 320-acre spacing unit; and (4) reduce the spacing unit boundary setback from 660 feet to 500 feet.

Peter Loeffler, vice president for exploration and development with American Oil and Gas, Inc., Denver, CO, was administered the oath by Lee McCahren and testified on behalf of North Finn LLC.

Exhibits offered and admitted into the record for North Finn LLC:

Exhibit 1 – Map showing the location of the application, Orders 5-81, 8-85, and 7-85, and Case Nos. 15-2006 and 22-2008

Exhibit 2 – Six West Short Pine Hills wells in 160-acre spacing: later wells show no interference

Exhibit 3 – View of 15 N 2 E on the southern edge of West Short Pine Hills field and the western edge of Cady Creek field

Exhibit 4 – Petrophysical log of rock properties

Fred Steece was administered the oath by Mr. McCahren and testified on behalf of the Department of Environment and Natural Resources. Mr. Steece provided a map of the area showing spacing units.

Notice of the hearing was published twice on or before December 17, 2008, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources Rapid City office.

The department received no petitions to intervene.

Motion by Monson, seconded by DeMersseman, to approve Case No. 25-2008, North Finn LLC. Motion carried.

Motion by McCahren, seconded by DeMersseman, to adopt the Findings of Fact, Conclusions of Law, and Orders for Case No. 25-2008, and to authorize Mr. Blumhardt to execute the Orders. Motion carried.

Mr. Blumhardt closed the hearing at 10:20 a.m.

OIL AND GAS CASE NOS. 26-2008, 27-2008, AND 28-2008, ZENERGY OPERATING COMPANY, LLC: Rich Williams reported that Lawrence Bender, attorney for Zenergy Operating Company LLC, submitted Motions for Continuance to February 19, 2009, for Oil and Gas Case Nos. 26-2008, 27-2008, and 28-2008.

Chairman Sweetman requested board action.

Motion by McCahren, seconded by Bullene, to continue the hearings on Case Nos. 26-2008, 27-2008, and 28-2008, Zenergy Operating Company, LLC, to the February 19, 2008, board meeting. Motion carried.

WHARF RESOURCES (USA), INC. RECLAMATION SURETY INCREASE FOR MINE PERMIT NOS. 356, 434, 435, AND 464: Chairman Sweetman appointed Lee McCahren as hearing chair for this matter.

Mike Cepak was administered the oath by Mr. McCahren and testified that in October 2008 the Board of Minerals and Environment approved a \$1,157,000 bond increase for Wharf to cover reclamation of Heap Leach Pad #5. DENR is recommending another bond increase for Wharf, this time related to water treatment in Wharf's process area. This is in the area of the leach pads and process ponds. Wharf is currently scheduled to complete mining in 2010, and leaching of ore on the pads will continue for a year or two longer. Water treatment will need to continue for several years to meet water quality standards.

As Wharf will be leaching longer, the department has re-evaluated the costs of water treatment in the process area. The re-evaluation used conservative calculations over a longer treatment period.

The main parameter of concern is nitrate, which comes from the degradation of cyanide and from residual ammonium nitrate used in blasting agents. Although nitrate can be treated in Wharf's Ross Valley Biological Treatment System facility, the bond calculation includes the use of a Reverse Osmosis unit to account for removal of metals. Use of the Reverse Osmosis unit also made the calculation more conservative.

The calculated bond increase is for \$3,155,000, and Wharf has submitted the increase as an amendment to its letter of credit.

DENR recommended that the board accept the \$3,155,000 increase to Wharf's Letter of Credit (No. S18572/191556) with Scotia Bank.

This will bring the total Wharf reclamation bond amount to \$15,486,422. Including Wharf's post closure bond of \$8,120,700 and spill financial assurance of \$500,000, the total Wharf bond will be \$24,107,122.

Motion by Sweetman, seconded by Duxbury, to accept the amendment to the Letter of Credit to increase the surety amount by \$3,155,000 to the new amount of \$15,486,422 for Wharf Resources (USA), Inc., Lead, SD, Mine Permit Nos. 356, 434, 435, and 464. Motion carried.

Mr. McCahren declared the hearing closed.

THE GOLDEN REWARD MINING COMPANY, LP, REQUEST FOR RELEASE OF RECLAMATION LIABILITY AND REDUCTION OF SURETY, APPROVAL OF POST CLOSURE PLAN, AND INCREASE OF POST CLOSURE AMOUNT FOR MINE PERMIT NO. 450: Chairman Sweetman appointed Lee McCahren as hearing chair for this matter.

Mr. McCahren opened the hearing at 10:50 a.m.

Max Main, attorney from Belle Fourche, represented Golden Reward Mining Company, LP.

Rich Williams, assistant Attorney General, represented the Department of Environment and Natural Resources.

The purpose of the hearing was to consider the partial release of Golden Reward's reclamation liability, the approval of the post closure plan, setting the period of post closure care, and setting the reclamation and post closure financial assurance types and amounts for Golden Reward Mining Company.

Notice of the hearing was published on December 18, 2008, in the Black Hills Pioneer and the Rapid City Journal. Affidavits of Publication are on file at DENR.

The notice of recommendation and hearing were mailed to Golden Reward Mining Company, Lawrence County Planning and Zoning, and DENR's interested persons mailing list.

Comments in support of Golden Reward's release petition and post closure plan were submitted by Terry Peak Ski Area, Lawrence Conservation District, Black Hills Regional Ski for Light, and Wilderness Estates Development.

The deadline for intervention was January 8, 2009, and no petitions to intervene were submitted.

Witnesses administered the oath and testifying on behalf of Golden Reward Mining Company:

Duane Peck, general manager, Lead, SD
Jim Lessard, exploration and land manager, Lead, SD
Ron Waterland, environmental manager, Lead, SD
Steve Viert, Cedar Creek Association, Inc., Ft. Collins, CO
Paul Nelson, project engineer, RESPEC, Rapid City, SD

Exhibits offered and admitted into the record for Golden Reward Mining Company:

Golden Reward Exhibit 1 (A-F) – Request for Release of Reclamation Liability and Reduction of Surety, Approval of Post Closure Plan, and Increase of Post Closure Amount for Mine Permit No. 450

Golden Reward Exhibit 2 – Sample Letter of Credit

Motion by Sweetman, seconded by Monson, to accept the form of the Letter of Credit for Golden Reward Mining Company. Motion carried.

Witness administered the oath and testifying on behalf of DENR:

Eric Holm, natural resource engineer, DENR Minerals and Mining Program.

Exhibits offered and admitted into the record for DENR:

State's Exhibit 1 (A-I) – Briefing document

State's Exhibit 2 – Golden Reward Mining Company 2009 revised reclamation bond calculation summary

State's Exhibit 3 – Final post closure plan and financial assurance

State's Exhibit 4 – Final petition for release of reclamation obligations

DENR recommended that the board:

- 1) Approve Golden Reward's petition for release of reclamation liability for approximately 395.91 acres of reclaimed affected land under Mine Permit 450 that include the Golden Reward Mine and related facilities and approximately 5.23 acres of unreclaimed land that will be used for snowmaking by the Black Hills Chairlift Company, and for long-term record storage by Golden Reward and Wharf Resources.
- 2) Set a new reclamation financial assurance amount for lands not being released of reclamation liability (approximately 7.30 acres of affected land in the permit area) in the amount of \$5,600 and in a form acceptable to the board.
- 3) Approve Golden Reward's post closure plan for the mine site.
- 4) Set post closure financial assurance for Golden Reward at \$1,767,077 and in a form acceptable to the board to cover post closure care for 30 years.

Motion by Sweetman, seconded by Duxbury, to accept DENR's recommendations for release of reclamation liability and reduction of surety, approval of post closure plan, and increase of post closure amount for Mine Permit No. 450. Motion carried.

Motion by Monson, seconded by Duxbury, to authorize Mr. McCahren to execute the Order. Motion carried.

Mr. McCahren declared the hearing closed at 3:30 p.m.

A court reporter was present for the hearing and a transcript of the proceedings may be obtained by contacting Capital Reporting Services, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

The hearing was also digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

OTHER BUSINESS: Kyrik Rombough, Air Quality Program, reported that DENR issued a PSD Permit for Big Stone II. The Sierra Club appealed issuance of the permit to the 6th Circuit Court. DENR also submitted the Title V Permit to EPA for their 45-day review. EPA is considering

submitting comments on the permit, and potentially requesting changes to the permit. If EPA does request changes, the matter will have to come back to the board.

Mike Cepak reported that Powertech submitted a Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate for a proposed uranium in situ leach mine and processing facility. As part of the process, the public can nominate that land for inclusion on the Preliminary List of Special, Exceptional, Critical, or Unique Lands. Mr. Cepak stated that nominating petitions have been submitted by Charmaine White Face and the Defenders of the Black Hills, Debra White Plume, and the Oglala Sioux Tribe through their attorney, Elizabeth Lorina. Since there are three petitions nominating the same piece of ground and each petition is similar, the department recommended holding a consolidated hearing.

Motion by Duxbury, seconded by Blumhardt, to consolidate the three petitions. Motion carried.

Mr. Sweetman appointed Lee McCahren as hearing chair. Rich Williams will prepare the Order appointing Mr. McCahren as the hearing chair.

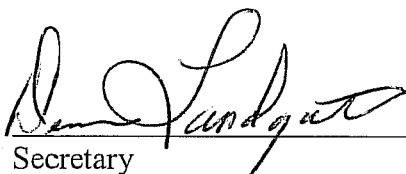
Chairman Sweetman stated that during the November 19, 2008, public hearing to consider the application of Powertech (USA), Inc. for a uranium exploration permit, one of the intervenors told the board that he would retaliate against them if the board approved the permit. Chairman Sweetman said he took that as a direct threat to the board, and it probably should not have gone unchallenged.


Rich Williams noted that the gentleman made a declaration of war, but then he said there would be no violence. In order for it to be criminal, it would have to be a direct threat with the apparent ability to carry out that threat. Mr. Williams said law enforcement would need to review the transcript to determine whether or not something criminally would happen.

Mr. Williams said if the same individual makes similar threats again, the individual could be barred from attending hearings.

The next Board of Minerals and Environment meeting is February 19, 2009, in Pierre.

ADJOURNMENT: Motion by Blumhardt, seconded by Monson that the meeting be adjourned. Motion carried.

 2-19-09
Secretary Date

 2/19/09
Witness Date

January 15, 2009

License/Permit Holder License/ Permit Site No. Surety Amt. Surety No. Surety Company/Bank DENR Recommendation

Release of Liability & Surety:

Jack & Dorothy McBride 83-151 **151001** \$2,000 41-13-13 New Hampshire Insurance Company Release liability and \$2,000.

Tract McBride – SE1/4 NE1/4 Section 17; & SW1/4 NW1/4 Section 16;
T4S-R3E, Custer County

Releases of Liability:

Bowes Construction, Inc. 83-164 **164007** \$20,000 1078 VanTOL Surety Company Release liability.

NW1/4 Section 30; T126N-R51W, Roberts County

164008 S1/2 SE1/4 Section 15; T126N-R52W, Roberts County

164010 NW1/4 Section 36; T105N-R49W, Moody County

164014 NW1/4 Section 9; T107N-R68W, Buffalo County

164025 SE1/4 Section 28; T122N-R59W, Day County

Jensen Rock & Sand, Inc. 83-112 **112010** \$20,000 41-16-48 New Hampshire Insurance Company Release liability.

W1/2 Section 33; T124N-R78W, Walworth County

112014 SW1/4 Section 12; T125N-R73W, McPherson County

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
PierreDate 1-15-09

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Paul Nelson	Rapid City, SD	Golden Reward
Wester Nios	Rhame, ND	
Betty Goy Nios	Rhame, ND	
Roberto Fierabr	Pierre	DENR
TED BOTA	GREENWOOD VILLAGE, CO	GOLDEN REWARD
Duane A. Peck	Lead, SD	Golden Reward
PETER LOEFFLER	DENVER CO	NORTH FINN
Ron Waterland	Sturgis S.D.	Golden Reward
Steve Vient	FT Collins CO	Golden Reward
JIM LESSARD	SPEARFISH SD	GOLDEN REWARD
Patricia Corbetta	Denver, CO	GOLDEN REWARD
FRED STEECE	RC	DENR/O&G
Mike Cepak	Pierre SD	DENR/MM
GL (Mack) McGillivray	Rapid City	DENR/O&G
Eric Holm	Pierre	DENR/MM
Stan Michals	Rapid City	GFP
Max Mann	Belle Fourche	Golden Reward and North Finn
Mike Lees	Pierre, SD	DENR/MM